90-102

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

LIBERTY COUNTY, FLORIDA, ET AL,
AND
LIBERTY COUNTY SCHOOL BOARD, ET AL,
Petitioners,

versus

GREGORY SOLOMON, ET AL,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS, ELEVENTH CIRCUIT.

APPENDIX
VOLUME II

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VOLUME I

VOLUME II

Gregory SOLOMON, et al., Plaintiffs-Appellants,

v.

LIBERTY COUNTY, FLORIDA, et al., Defendants-Appellees.

Gregory SOLOMON, et al., Plaintiffs-Appellants,

v.

LIBERTY COUNTY SCHOOL BOARD, FLORIDA, et al., Defendants-Appellees.

Nos. 87-3406, 87-3406A.

United States Court of Appeals,
Eleventh Circuit.

Dec. 12, 1988

Black citizens brought voting rights challenge to at-large election system in county. The United States District Court for the Northern District of Florida, Nos. 85-7010-MMP, 85-7009-MMP, Maurice Mitchell Paul, J., found no violation. Citizens appealed. The Court of Appeals, Tjoflat, Circuit Judge, held that: (1) district court made inadequate factual findings on numerous issues; (2) minority voting age

population, rather than minority voter registration figures, was proper consideration for determining whether there would be single-district majority; (3) district court should have considered regression analysis expressing relationship between percentage of vote received by particular candidate and percentage of black registered voters; and (4) district court should have considered legislature's racially discriminatory reason for prescribing at-large system.

Vacated and remanded.

Hill, Circuit Judge, specially concurred.

1. Elections - 12(3)

Unless minority group can show that it is significantly underrepresented in proportion to percentage in total electorate, minority group has no challenge to voting qualification or prerequisite, even if racial prejudice and

discrimination are rampant. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

2. Elections - 12(7)

Plaintiffs seeking to establish whether minority group would achieve roughly proportional representation but for multimember electoral system must establish that minority group can constitute majority which is politically cohesive in one or more single-member districts. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

3. Elections - 12(7)

Plaintiffs in voting rights challenge to multimember election system must show that system will likely discriminate against their minority group in challenged election. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

4. Elections - 12(9)

If evidence establishes that bloc-voting whites probably will defeat bloc-

voting blacks plus white crossovers in multimember election, then court may infer that current system is driven by racial bias and that bias is likely to dominate challenged election; but if evidence clearly establishes that bloc-voting whites will not defeat bloc-voting blacks plus white crossovers, then court must infer the discriminatory effect of challenged system is not product of racial bias. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

5. Elections - 12(9)

If evidence of vote polarization and minority electoral failure is either inconclusive, insufficient, or unavailable due to lack of minority candidacies, courts must rely on full range of totality of circumstances to determine whether challenged electoral system violates Voting Rights Act. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

6. Elections - 12(3)

To establish vote dilution claim, plaintiff must prove that minority group is underrepresented in proportion to percentage of total electorate, that minority group has sufficient geographic and political cohesion to allow creation of one or more minority controlled single-member districts, that totality of circumstances, with special emphasis on both vote polarization and extent of past minority electoral successes, compels inference that current electoral system is driven by racial bias in community or political system, and that evidence also leads to conclusion that challenged system will continue to deny minorities equal access to political process. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

7. Counties - 38

Voting age population of minorities, rather than registered voting age population of minorities, was proper consideration to determine whether blacks would constitute politically cohesive majority in single-member district and whether multimember district violated Voting Rights Act. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

8. Counties - 38

Evidence that blacks were 51% of minority voting age population in one district of county with at-large elections established that blacks would constitute majority and supported voting rights challenge to at-large elections. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

9. Counties - 38

Regression analysis showing relationship between percentage of vote

received by particular candidate and percentage of black registered voters established black political cohesiveness and supported voting rights challenge to at-large election system, even though one primary election was not racially polarized; average correlations in elections involving black candidates ranged from .787 to .966. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

10. Counties - 38

District court in voting rights challenge to at-large election system could not disregard regression analysis of elections involving black candidates and showing relationship between percentage of vote received by particular candidate and percentage of black registered voters, event though one election showed no black political cohesiveness; data from elections with black candidates demonstrated extremely strong, black vote

polarization. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

11. Elections -12(9)

If small number of minority candidacies prevents compilation of statistical evidence, court should not deny relief, but should rely on other totality of circumstances factors to determine if electoral system had discriminatory effect. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

12. Counties - 38

Plaintiffs in voting rights challenge to at-large electoral system should have been able to buttress their claims of white bloc voting by pointing to racial voting patterns in state and federal elections that they did not challenge. Voting Rights Act of 1965, § 2, 42, U.S.C.A. § 1973.

13. Counties - 38

District court's inadequate findings of fact in voting rights challenge to at-large election system justified remand for more findings on history of discrimination, other potentially discriminatory voting practices, candidates slating process, overt, racial appeals to voters, responsiveness of elected officials, and state policy behind electoral systems in county. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

14. Counties - 38

District court's finding that North Florida and county with at-large election system had undisputed history of extensive official discrimination affecting rights of blacks to participate in political process was incapable of meaningful review in voting rights challenge. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

15. Counties - 38

Trial court in voting rights challenge to at-large election system in county should have considered legislature's racially discriminatory reason in 1947 to prescribe at-large system. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973; West's F.S.A. §§ 230.04-230.10, 230.105; West's F.S.A. Const. 1885, Art. 8, § 5.

16. Elections - 12(3)

White-bloc vote that normally will defeat combined strength of minority support plus white crossover vote rises to level of legally significant white-bloc voting. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

17. Counties - 38

Evidence that blacks in county plus average number of white crossover voters was 29.5% of total vote in county was legally significant evidence of white vote

polarization and supported blacks' challenge to at-large electoral system in county. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

18. Counties - 38

District court in voting rights challenge to at-large election system made inadequate finding of fact that election system possessed some features that could enhance opportunity to discriminate against blacks; court should have determined why those devices were present and how they impacted on right of blacks to participate in political process. Voting Rights Act of 1965, § 2, 42, U.S.C.A. § 1973.

19. Federal Civil Procedure - 2290

In any case in which plaintiff's claim is based on circumstantial evidence, ultimate findings of fact, in most instances, must be supported by solid basis of subsidiary findings of fact.

20. Counties - 38

Voting patterns in black candidate's election were not probative evidence of vote polarization alleged in voting rights challenge to at-large election system, if candidate was not perceived to be black candidate. Voting Rights Act of 1965, § 2, 42, U.S.C.A. § 1973.

21. Elections - 12(9)

Lingering effects of past discrimination are relevant in voting rights challenge only if they continue to hinder minority group's ability to participate effectively in political process. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

22. Counties - 38

Nonelection of blacks had minimal probative value in determining whether at-large election system was driven by racial bias and violated Voting Rights Act.

Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

23. Counties - 38

Opposition to possible remedy by some members of plaintiff class was irrelevant in weighing totality of circumstances to determine whether at-large election system violated Voting Rights Act. Voting Rights Act of 1965, § 2, 42 U.S.C.A. § 1973.

David M. Lipman, Lipman & Weisberg, Miami, Fla., for plaintiffs-appellants.

Jack F. White, Jr., Hal A. Davis, Quincy, Fla., for defendants-appellees.

Appeals from the United State District Court for the Northern District of Florida.

Before TJOFLAT and HILL, Circuit Judges, and HALL*, District Judge.

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* Honorable Robert H. Hall, U.S. District Judge for the Northern District of Georgia sitting by designation.

TJOFLAT, Circuit Judge:

I.

These consolidated cases involved challenges under section 2 of the Voting Act of 1965, 42 U.S.C. § 1973 (1982) (as amended), to the at-large method of electing the county commission and the school board of Liberty County, Florida.[1] The commission governs the county; the board operates the county's school system. Each body has five members who serve for staggered four-year terms. See Fla. Const. art. 8, § 1(e) (county commission); Fla. Stat. § 100.041(3) (1987) (school board). Candidates run for the seat on the commission or school board that bears the number of the "residence district" in which they live. See Fla. Const. art. 8, § 1(e) (county commission); Fla. Stat. § 124.01 (same); id. § 230.061 (school board). In both the primary and general elections, the entire county electorate

votes for one candidate from each residence district. See Fla. Const. art. 8, § 1(e) (county commission); Fla. Stat. § 100.041(2) (same); id. § 230.08-.10 (school board). Most candidates seek election as the nominee of a political party and therefore must first run in their party's primary election. To win party nomination, candidates must receive a majority of the countywide vote; if no candidate gets a majority of the vote, a second run-off primary is held. See id. §§ 100.061, .091 (general provisions). To be elected, candidates must receive a plurality of the vote in a countywide general election. See id. § 100.181 (general provision); id. § 230.10 (school board).

The appellants, the plaintiffs below, in these cases are four black citizens of liberty County. They allege that the at-large method of electing county

commissioners and school board members violates the Voting Rights Act because the systems deny blacks a fair opportunity to participate in the political process and to elect candidates of their choice.[4] The appellants therefore seek injunctive relief. The present electoral systems, they contend, should be disbanded and the county should be divided into five districts, each of which would elect one member to the commission and to the school board. One of these single-member districts would have a black majority, thus alleviating the discrimination of which they complain. The appellees in these cases are the Liberty County Commission, the liberty County School Board, and the members of those bodies in their official capacities. They deny that the at-large method violates the Act, as the appellants allege.

At the conclusion of a bench trial, the district court found for the appellees, observing that under the current at-large electoral system black citizens had more political influence than they would have under any single-member district scheme the court could fashion. The court therefore concluded that the evidence presented by the appellants was insufficient to demonstrate a violation of the Voting Rights Act and denied relief. These appeals followed;

II.

The Voting Rights Act was enacted in 1965 to protect the right of racial minorities to participate effectively in the political process. Section 2 of the Act, which is essentially a codification of the fifteenth amendment, provides that:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of

> the United States to vote on account of race or color.

Voting Rights Act of 1965, P.L. 89-110, § 2, 79 Stat. 437, 437.

In Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) (en banc), aff'd sub nom. East Carroll Parish School Bd. v. Marshall, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed. 2d 296 (1976), our predecessor circuit developed a method of analysis to guide trial courts in determining whether an electoral system denied a minority group access to the political process on account of race when no direct evidence of discriminatory intent exists. First, the trial courts were to determine whether the plaintiffs had demonstrated that their minority group was underrepresented in proportion to its percentage of the total electorate. If the plaintiffs demonstrated such underrepresentation, the courts were then to determine whether the

underrepresentation was caused by an intent to discriminate; the courts would do so by making a number of factual inquiries. Called the "totality of circumstances" test, these inquiries included:

> 1. [Whether] any history of official discrimination in the state or political subdivision ... touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
>
> 2. [Whether] voting in the elections of the state or political subdivision is racially polarized;
>
> 3. [Whether] the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5. [Whether] members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and

health, which hinder their ability to participate effectively in the political process;

6. Whether political campaigns have been characterized by overt or subtle racial appeals; and

7. [Whether] members of the minority group have been elected to public office in the jurisdiction.

Carrollton Branch of the NAACP v. Stallings, 829 F.2d 1547, 1553 (11th Cir. 1987) (summarizing the Zimmer inquiries), cert. denied, ---- U.S. ----, 108 S.Ct. 1111, 99 L.Ed.2d 272 (1988). If the findings of fact yielded by these inquiries, taken as a whole, gave rise to the inference that the electoral system's discriminatory effect was driven by racial bias in the community or its political system, the plaintiffs established a violation of the Act. The court could then remedy this violation by eliminating the challenged multimember electoral system and, in its place, establishing an appropriate number of single-member

electoral districts drawn along racial lines to assure roughly proportional minority representation.

In 1980, the Supreme Court enhanced the plaintiffs' burden of proof in vote dilution cases. See Mobile v. Bolden, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980). In Bolden, the Court held that the Voting Rights Act required the plaintiffs to prove that the responsible government officials "conceived or operated" the challenged electoral system as a "purposeful device to further racial discrimination." Bolden, 446 U.S. at 70, 100 S.Ct. at 1501 (citing Whitcomb v. Chavis, 403 U.S. 124, 149, 91 S.Ct. 1858, 1872, 29 L.Ed.2d 363 (1971)). Thus, an inference of racial bias yielded by the seven Zimmer inquiries might not be sufficient in a given case to establish a section 2 violation.

In 1982, Congress amended the Voting Rights Act to overrule Bolden.[11] The legislative history of the 1982 amendment indicated that in addition to the Zimmer inquiries, in weighing the totality of the circumstances the courts should consider:

> [8.] [W]hether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and
>
> [9.] [W]hether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

S. Rep. No. 417, 97th Cong., 2d Sess. 29, reprinted in 1982 U.S. Code Cong. & Admin. News 177, 207. Following the enactment of the 1982 amendment, the courts resumed adjudicating vote dilution claims under the totality of circumstances approach. This approach, however, was again modified when, in 1986, the Supreme Court decided the case of Thornburg v. Gingles, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986).

In Gingles, the Supreme Court added an important gloss to the test for vote dilution claims:

> First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. If it is not, as would be the case in a substantially integrated district, the multi-member form of the district cannot be responsible for minority voters' inability to elect its candidates. Second, the minority group must be able to show that it is politically cohesive. If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it -- in the absence of special circumstances, such as the minority candidate running unopposed [--] usually to defeat the minority's preferred candidate. In establishing this last circumstance, the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives.

Gingles, 478 U.S. at 50-51, 106 S.Ct. at 2766-67 (footnotes & citation omitted). By following the analytic framework

announced in Gingles, a trial court can answer what we believe are the four questions posed in every vote dilution case: (1) Is the minority group significantly under-represented in proportion to its percentage of the total electorate? (2) If so, could the minority group achieve roughly proportional representation but for the multimember electoral system? (3) If so, can the minority group establish that the discriminatory effect of the challenged electoral system is driven by racial bias in the community or its political system? (4) If so, can the minority group establish that such bias will continue to prevent the minority group from having equal access to the political process? By asking these questions we do not mean to imply a new test of vote dilution under section 2 of the Voting Rights Act. Rather, we simply restate the procedure a

trial court should follow in deciding a section 2 case in order to give due recognition to Congress' affirmance of the totality of circumstances test and the three elements of the Gingles gloss. We now examine these questions in turn.

[1] The first question asks whether the minority group is significantly underrepresented in proportion to its percentage of the total electorate. This question does not explicitly arise in most vote dilution cases because, as a practical matter, the minority group would not be bringing suit if it were proportionally represented. The question, however, is fundamental to section 2 jurisprudence because the Voting Rights Act exists solely to remedy inequalities in access to the political process. Thus, unless the minority group can show that it is significantly underrepresented in proportion to its percentage of the total

electorate, the minority group has no section 2 claim -- even if racial prejudice and discrimination are rampant in the challenged electoral system.

[2] Our second question asks whether the plaintiffs would be able to elect one or more representatives but for the multimember nature of the electoral system. Phrased in terms of effect rather than cause, this question asks whether the court can provide a remedy for the plaintiffs' injury if vote dilution ultimately is established. While this question was an implicit part of shaping a remedy under the totality of circumstances analysis, Gingles gives this question new prominence by making it a threshold inquiry.[4] The plaintiffs meet this requirement by producing the evidence necessary to satisfy the first two elements of the Gingles gloss. Thus, the plaintiffs must establish that the

minority group can constitute a majority (Gingles element 1) that is politically cohesive (Gingles element 2) in one or more single-member districts.[4]

[3] Our third and fourth questions both primarily rely on the body of evidence produced under the third element of the Gingles gloss. The third question asks whether the minority group can establish that the discriminatory effects of the challenged electoral system are driven by racial bias in the community or its political system. The plaintiffs in an exceptional case might be able to produce direct evidence on this point, but in the usual case the answer must be inferred from the totality of the circumstances. The fourth question builds on the third, asking whether the minority group can establish that such bias will continue to prevent the minority group from having equal access to the political

process so as to warrant injunctive relief. In other words, the plaintiffs must show that in the election they are challenging, the electoral system will likely discriminate against their minority group.[4]

[4] To answer these third and fourth questions, the trial court may have to draw upon all of the evidence produced by the nine totality of circumstances inquiries. Under Gingles, however, evidence of white bloc voting -- the second inquiry under the totality of circumstances test -- is the most probative indicator of vote dilution. If this evidence clearly establishes that whites, voting as a bloc, will probably defeat blacks voting as a bloc plus white crossovers, then the court may infer, solely from this evidence, both that the current system is driven by racial bias

and that this bias is likely to dominate the challenged election.[11]

Conversely, if the evidence clearly establishes that whites, voting as a bloc, will not defeat blacks voting as a bloc plus white crossovers, then the court must infer that the discriminatory effect of the challenged system is not the product of racial bias; the plaintiffs' case, therefore, would have to be dismissed on the merits.[11]

[5] Between these extremes, however, will fall situations in which evidence of vote polarization and minority electoral failure is either inconclusive, insufficient, or unavailable due to a lack of minority candidacies. In these cases, the courts must rely on the full range of totality of circumstances inquiries to determine whether the challenged electoral system violates the Act. The Supreme

Court recognized this in Gingles when it noted that:

> The number of elections that must be studied in order to determine whether voting is polarized will vary according to pertinent circumstances. One important circumstance is the number of elections in which the minority group has sponsored candidates. Where a minority group has never been able to sponsor a candidate, courts must rely on other factors that tend to prove unequal access to the electoral process. Similarly, where a minority group has begun to sponsor candidates just recently, the fact that statistics from only one or a few elections are available for examination does not foreclose a vote dilution claim.

[6] To summarize, we hold that to establish a section 2 vote dilution claim the plaintiffs must prove (1) that the minority group is underrepresented in proportion to its percentage of the total electorate, (2) that the minority group has sufficient geographic and political cohesion to allow the creation of one or more minority controlled single-member districts, (3) that the totality of

circumstances, with special emphasis on vote polarization and the extent of past minority electoral success, permits the inference that the current electoral system is driven by racial bias in the community or its political system, and (4) that this same evidence also leads to the conclusion that the challenged electoral system will continue to deny minorities equal access to the political process.

III.

In deciding these cases, the district court did not use our four-question method of analysis, nor did the court pay particular attention to the Gingles gloss. As a result, the district court made inadequate findings of fact and conclusions of law with respect to several critical issues in these cases. We are therefore unable to provide full appellate review.

Ordinarily, we would remand these cases to the district court for more complete findings of fact and a reassessment of its conclusions of law without intimating any view as to the results the district court should reach. As the following discussion indicates, however, to do so here would simply perpetuate the error that has occurred. Accordingly, we address the factual issues that were before the district court, pointing out those areas as to which the material facts are not in dispute. We also address the legal issues, with especial attention to areas in which the district court misapplied the law. Our discussion adheres to the four-question method of analysis described above.[4]

A.

The first question asks whether blacks in Liberty County are

underrepresented in proportion to their percentage of the total electorate. the undisputed evidence established that blacks comprise 11% of Liberty County's population and that a black candidate has never been elected to countywide office. Though the district court did not answer this question, the record demonstrates that appellants established underrepresentation as a matter of law.

B.

The second question asks whether blacks in Liberty County could achieve roughly proportional representation in a single-member district but for the multimember electoral system; stated another way, the question asks whether blacks in Liberty County could constitute a politically cohesive majority in a single-member district. Following the pattern laid out in Gingles, we first

examine the sufficiency of the black single-district majority, and then turn to the issue of black political cohesiveness.

The undisputed demographic evidence in this case indicates that the black population is concentrated in the northwest quadrant of Liberty County. Countywide, blacks comprise only 11% of the total population; if, however, the county were divided into five equally populous single-member districts to accommodate both the commission and school board elections, blacks might achieve a majority in one single-member district. In this district (District 1), blacks would comprise 49% of the total population, 51% of the voting age population, and 46% of the registered voting age population.[11]

[7, 8] The district court found the registered voting age population to be the determinative factor in establishing a

single-district majority under Gingles. We hold that reliance on the registered voting age population was improper. Minority voter registration figures are inherently unreliable measures in vote dilution cases because the very lack of minority political power responsible for the bringing of the section 2 action also may act to depress voter registration. Although the language of Gingles seems to refer simply to gross minority population, references in the opinion to "minority voters" show that the Court intended the sufficiency of the single-district majority to be measured by the size of the voting age population. See Gingles, 478 U.S. at 50-51 n. 17, 106 S.Ct. at 2766-67 n. 17; see also McNeil v. Springfield Park Dist., 851 F.2d 937, 944-45 (7th Cir. 1988) (holding that voting age population, not gross population, controls Gingles analysis). Although District 1's 51%

black voting age population might create only a mathematical majority, if white crossover votes are included, an effective black majority would be achieved in the district.[11] The appellants' evidence showing a 51% minority voting age population in District 1 was therefore sufficient as a matter of law to meet the majority requirement of Gingles.

[9] As noted, in addition to geographic cohesion, the appellants must demonstrate that the black community in Liberty County is politically cohesive. To meet this burden, the appellants presented statistical evidence compiled by Douglas St. Angelo, a professor of political science at Florida State University. Professor St. Angelo performed a series of regression analyses on three sets of elections involving the Liberty County electorate. These regression analyses express a relationship

between the percentage of the vote received by a particular candidate and the percentage of black registered voters. The resulting figure, called the "r" coefficient, expresses a correlation that can range from 0.0 (no relationship) to 1.0 (perfectly consistent positive relationship). r values show a statistically significant correlation beginning at about 0.3; statisticians rarely encounter r values in the 0.8-0.9 range.

St. Angelo performed his first regression analysis on the six elections, held over a six-year period, in which a black candidate ran for countywide office.[11] Although the black vote was not united behind one of the black candidacies, that of Earl Jennings in 1980, in the other black candidacies the black vote was sufficiently cohesive to produce a very high average correlation[11]

value of 0.787.[11] To provide additional statistical data, St. Angelo analyzed a second set of elections that involved black candidacies for national office and produced an even higher average correlation of 0.966.[12] Finally, for a third set of election returns St. Angelo turned to a group of elections that revolved around racial issues or themes. This last set of election returns also produced a very high average correlation of 0.925.[13] Based on the correlations established in these three sets of data, the appellants contended that voting patterns in Liberty County were racially polarized.[14]

We are unable to discern from the district court's findings of fact whether the court ultimately found that blacks in Liberty County act in a politically cohesive manner. In one part of its findings, the district court seems to have

discounted appellants' regression analyses; nevertheless, in other parts, the court appears to have assumed black political cohesiveness. We need not resolve this contradiction, however, since we hold that appellants' evidence established black political cohesiveness as a matter of law.

Bivariate regression analysis is widely used to show racial polarization in vote dilution cases. The Supreme Court, in Gingles, recognized the legal significance of this form of statistical analysis, see 478 U.S. at 53 n. 20, 106 S.Ct. at 2768 n. 20; this circuit also has approved its use. See Carrollton Branch of the NAACP v. Stallings, 829 F.2d 1547, 1558 (11th Cir. 1987), cert. denied, -- U.S. --, 108 S.Ct. 1111, 99 L.Ed.2d 272 (1988); see also McMillan v. Escambia County, 688 F.2d 960, 966 n. 12 (5th Cir. 1982), vacated and remanded in light of

1982 amendment to the Voting Rights Act, 466 U.S. 48, 104 S.Ct. 1577, 80 L.Ed.2d 36 aff'd 748 F.2d 1037, 1043 n. 12 (1984). Despite these precedents, the district court rejected St. Angelo's statistical analyses. The court appears to have done so for two reasons, neither of which is valid.

[10] First, the court found the statistical base for St. Angelo's first regression analysis -- the six elections in which a black candidate ran for countywide office -- inadequate to support his ultimate finding of black political cohesiveness because voting was not polarized in the 1980 primary elections in which Earl Jennings sought the Democratic nomination for a seat on the school board.[11] The Supreme Court has stated that "the fact that racially polarized voting is not present in one or a few individual elections does not necessarily

negate the conclusion that the district experiences legally significant bloc voting."[11] Gingles, 478 U.S. at 51, 106 S.Ct. at 2770. In the face of data from the other Liberty County black candidacies for countywide office, all of which demonstrated extremely strong black vote polarization, we hold that the trial court erred in disregarding St. Angelo's first regression analysis.

[11, 12] Because Liberty County has had only six elections involving minority candidacies for countywide office, the appellants expanded their statistical information base by having St. Angelo analyze the two other sets of elections we have described. The district court, as its second reason for rejecting St. Angelo's finding of black political cohesiveness, concluded that St. Angelo's reliance on the data these analyses produced was improper because these

elections did not involve the electoral systems challenged in these cases.[11] These two other sets of elections, as we have noted, depicted Liberty County voting patterns in state and federal elections involving a minority candidate[12] and in elections in which racial issues were strongly present.[13] As to the latter set, St. Angelo gave specific, unchallenged testimony concerning why the particular elections were included in his analysis. We hold that plaintiff's should be able to buttress their claims of white bloc voting by pointing to racial voting patterns in elections for offices they do not challenge in their section 2 suit. The use of such elections is especially appropriate when few minority candidacies are available. See Citizens for a Better Gretna v. City of Gretna, 834 F.2d 496, 502-03 (5th Cir. 1987) (allowing use of exogenous elections in vote dilution

cases). Professor St. Angelo's regression analyses were indeed probative of black political cohesiveness; accordingly, the district court erred in disregarding them.

C.

[13] The third question in our method of analysis asks whether appellants can establish that the discriminatory effects of the current electoral system are driven by racial bias. As we have observed, this question is usually answered by examining the results of the nine totality of circumstances inquiries. These inquiries are simply different specific manifestations of the third question. As a result, the conclusions that a court draws from them are inevitably interrelated; the trial court's decision on one issue may mandate a parallel conclusion on another. More importantly, misanalysis of one issue may result in a

skewed analysis of other issues. Although the court's findings with respect to one of the totality of circumstances inquiries -- the presence of white bloc voting -- can conclusively answer the third question, the trial court will usually corroborate these findings by pointing to the results of the other inquiries.

In these cases, the district court conducted all nine of the totality of circumstances inquiries. In some, the court followed an incorrect legal standard in analyzing the evidence, thus tainting the findings that the inquiries yielded. In others, the court failed to make findings of fact adequate for appellate review. For convenience, we examine the court's totality of circumstances inquiries in their usual order.

[14] 1. History of Discrimination. The trial court felt that it was unnecessary to enumerate specific findings

concerning the history of discrimination in Liberty County; instead, the court generally noted that North Florida and Liberty County have an undisputed history of "extensive official discrimination affecting the rights of blacks to participate in the political process." The phrase "affecting the rights of blacks to participate in the political process" is inherently ambiguous and, standing alone, is incapable of meaningful review. Moreover, it fails to answer several important questions that are inherent in the "History of Discrimination" inquiry in these cases. To what acts of discrimination was the district court referring when it stated that North Florida and Liberty County have a history of "extensive official discrimination"? How debilitating were these acts to the ability of blacks to participate in the political process? To what extent do the

effects of these acts still influence current political behavior? Without answers to questions such as these, we cannot assess the extent to which blacks in Liberty County continue to suffer from the effects of past discrimination.

Florida first adopted its at-large system for the election of county commissioners by constitutional amendment in 1900. See Fla. Const. of 1885, art. 8, § 5 (as amended). The Florida legislature instituted the at-large system for the election of county school boards in 1947. See 1947 Fla. Laws 189-90, Ch. 23726, §§ 5-9. The district court found that the 1900 constitutional amendment was not racially motivated; the court did find, however, that the 1947 legislation was the product of racial bias. see McMillan v. Escambia County, 638 F.2d 1239 (5th Cir. 1981) (finding 1947 Florida school board

at-large election system adopted with discriminatory intent), cert. denied, 453 U.S. 946, 102 S.Ct. 17, 69 L.Ed. 2d 1033 vacated in part on other grounds, 688 F.2d 960 (1982).

The Florida legislature required the counties to use the at-large system to elect school board members until 1984, when it enacted the "School District Local Option Single-Member Representation Law," Fla. Stat. § 230.105 (1987). That law authorizes a county's electorate, voting in a referendum, to replace the discriminatory at-large system with a single-member district system. Liberty County, which has not submitted the issue to referendum, apparently chooses to retain the at-large method of electing its school board members. The district court, in deciding whether this choice is the produce of racial bias, gave no weight to this sequence of historical events. As

the court stated: "even if the original racial motivation of the Florida Legislature [in 1947] was imputed to the Liberty County School Board 40 years later, this Court would not be inclined to give substantial consideration to this factor."[11]

[15] The Supreme Court has observed that "Congress intended that the Voting Rights Act eradicate inequalities in political opportunities that exist due to the vestigial effects of past purposeful discrimination." Gingles, 478 U.S. at 69, 106 S.Ct. at 2776. In deciding whether the Act has been violated, therefore, a court must "conduct a searching and practical evaluation of past and present reality." Id. at 65, 106 S.Ct. at 2774 (emphasis added).[12] The trial court accordingly erred when it refused to give any weight to the legislature's reason -- to discriminate against blacks -- for

prescribing the at-large system as the method of electing school board members in Florida.

2. Racially Polarized Voting. The appellants relied on a Racial Polarization Index prepared by Professor St. Angelo to establish white voter polarization in Liberty County. To formulate this index, St. Angelo first needed to determine how many blacks voted for black candidates. Three methods are commonly used to make this determination. The first, precinct analysis, was unavailable in these cases since it requires at least one almost all black district. The second method involves exit polling, which was also unavailable. In these cases, St. Angelo used a third method that extrapolates district-wide electoral patterns from the results in certain key precincts. St. Angelo first examined several almost all white voting precincts to determine the

percentage of the white electorate that voted for a particular candidate in these precincts. Using these percentage figures, St. Angelo then determined the percentage of the white electorate in the county that voted for a particular candidate. Having established the percentage of the white electorate's vote each candidate received, St. Angelo determined the percentage of the black electorate's vote each candidate received. Subtracting the white percentage from the black percentage, St. Angelo created a Racial Polarization Index.[11] The index analyzed the six elections involving a black candidate for countywide office and demonstrated that, except for one candidacy -- that of Earl Jennings in 1980, these elections exhibited significant levels of racial polarization.[11]

The district court concluded that while St. Angelo's racial polarization analysis did establish a "statistically significant degree of racial polarization," it did not establish a "legally significant' degree of racial polarization. In other words, the district court accepted the statistical validity of St. Angelo's analysis, but found that the analysis was not sufficiently persuasive to constitute proof of white vote polarization.

[16] The Supreme Court has recognized that the facts of each case will determine what level of polarization is "legally significant" under the Voting Rights Act. In general, however, the Court has noted that "a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." Gingles, 478 U.S. at 56,

106 S.Ct. at 2770. The district court failed to apply this legal standard to the evidence.[11]

[17] Appellants' Racial Polarization Index identified the amount of white crossover in the six elections involving black candidacies for countywide office.[12] If this evidence is taken in the light most favorable to the appellee, the average white crossover has amounted to 21% of the total white vote.[13] In terms of the total vote, white crossover has averaged 18.5%.[14] The combined voting strength of Liberty County blacks (11% of the total voting population), voting as a bloc, plus the average white crossover is therefore 29.5% of the total vote. This coalition will always be defeated by the opposing white bloc vote, which constitutes the remaining 70.5% of the total electorate. In sum, appellants presented strongly persuasive evidence of

white vote polarization. The district court erred in failing to recognize the legal significance of this evidence.

[18] 3. Other Potentially Discriminatory Voting Practices. We have held that a section 2 claim "'is enhanced by a showing of the existence of large districts, majority vote requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographic subdistricts.'" United States v. Marengo County Comm'n, 731 F.2d 1546, 1570 (11th Cir. 1984) (quoting Zimmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973) (en banc), aff'd sub nom. East Carroll Parish School Bd. v. Marshall, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed. 2d 296 (1976)). The district court found that the challenged electoral systems in Liberty County possessed some of these features and that these features "may enhance the

opportunity to discriminate against blacks in the election process." This ultimate fact is the only finding that the district court drew from this inquiry. Standing alone, this finding is inadequate.

[19] The totality of circumstances test is more than a checklist of factual findings that a trial court must make. As in any case in which the plaintiff's claim is based on circumstantial evidence, the ultimate findings of fact yielded by the court's inquiries must, in most instances, be supported by a solid base of subsidiary findings of fact. These subsidiary findings are essential because they allow the court to judge the strength of its ultimate findings of fact and thus the weight those findings should be given when assessing the totality of circumstances as a whole. Thus, in the context of this third inquiry, it is not enough to know that certain electoral devices that can

discriminate against blacks are present in Liberty County. The court must determine why such devices are present, and how they impact on the right of blacks to participate in the political process. Only after the court asks and then answers these questions, and any other questions the answers to them may prompt, can it give appropriate weight to its ultimate findings.

4. Candidate Slating Process. The district court found that several entrenched white families in Liberty County control an informal, unofficial candidate slating process.[11] Gregory Solomon, twice a candidate for the county commission, testified that this process was not open to blacks; the court, however, disagreed, noting that Earl Jennings, who was a candidate for the school board in 1980, had run on a slate

sponsored by the county's white power structure.

[20] The results of this inquiry illustrate the interrelation and interdependence of the various totality of circumstances inquiries. As we have noted, in assessing the extent of racial polarization (the second totality of circumstances inquiry), the district court discounted appellants' statistical evidence partially because voting patterns were not polarized in Earl Jennings' 1980 candidacy. The reason for this lack of polarization may well by explained by the district court's observation that Jennings had run on a "white slate." Earl Jennings, although black, may not have been perceived as a black candidate.[11] Indeed, if Earl Jennings was not perceived to be a black candidate, the voting patterns in his race were not probative evidence of vote polarization. See

Gingles, 478 U.S. at 68, 106 S.Ct. at 2776 ("Under § 2. it is the status of the candidate as the chosen representative of a particular racial group, not the race of the candidate, that is important.") (emphasis in original).

On remand, the district court should consider the possibility that the slating of Jennings on a white ticket in 1980 does not permit the inference that the candidate slating process in Liberty County is open to blacks. Particularly, the district court should consider whether the white slating process is open to black candidates who seek to represent black interests.

[21] 5. Lingering Effects of Past Discrimination. The district court correctly concluded that the lingering effects of past discrimination are relevant only if they continue to "hinder [the minority group's] ability to

participate effectively in the political process." S. Rep. No. 417, 97th Cong., 2d Sess. 29, reprinted in 1982 U.S. Code Cong. & Admin. News 177, 206. The court found that blacks in Liberty County bear the effects of extensive past discrimination in areas such as education, employment, and health. Nevertheless, the court found that black voter registration in Liberty County is very high, generally exceeding the level of white voter registration. Similarly, the court found that there was no indication that black voter turnout was lower than white turnout. Finally, the court found that while blacks have a much lower average income than whites, "[t]he nature of Liberty County politics [] does not seem to demand great financial expenditures." These comprehensive subsidiary fact findings fully support the court's ultimate finding that black political

participation in Liberty County is not impeded by the effects of past discrimination.

6. Racial Appeals. The district court found that "overt racial appeals" were made to the voters in Liberty County during "the 1956 presidential primary campaign, a 1956 state senate campaign, and a 1958 campaign for the state legislature," but that "race has not been an issue in recent Liberty County campaigns." Because the court failed to state why it reached this ultimate finding, we cannot determine whether, as appellants contend, the finding is clearly erroneous. On remand, the court must reconsider the evidence, and therefore its ultimate finding of fact, on this issue.

[22] 7. Election of Minorities. The district court briefly noted that no black has ever been elected to countywide office in Liberty County. The court found this

electoral failure to be of reduced significance, however, noting that "if a [hypothetical] 49 percent minority consistently fails to elect candidates of their race, dilution should be suspected and will be capable of proof. That an eleven percent minority [i.e. the size of the minority in this case] has failed on four occasions to elect members of its race is not nearly so suspect. Proof of dilution in such a case is necessarily much more difficult."

The Supreme Court has held that minority electoral failure is one of the two most probative indications of vote dilution. See Gingles, 478 U.S. at 48-49 n. 15, 106 S.Ct. at 2766 n. 15. In a situation such as the one presented here, however, where the racial minority comprises only 11% of the total electorate, we agree with the district court that the nonelection of blacks is of

minimal probative value in deciding whether an electoral system is driven by racial bias.

8. Lack of Responsiveness. Based on the testimony of the named plaintiffs in this litigation, the district court found that elected county officials "are approachable and sensitive to the particularized needs of black citizens." The trial court also found, however, that in an earlier case a former superintendent of the Liberty County Schools testified that "appointing a black principal would harm a Superintendent politically," Stallworth v. Shuler, 35 Fair Empl. Prac. Cas. (BNA) 770, 772 (N.D. Fla. 1984), aff'd 777 F.2d 1431 (11th Cir. 1985). Faced with these conflicting lines of credible testimony, the trial court ultimately concluded that "[w]hile the Court finds defendants' evidence on responsiveness significant and persuasive,

that evidence cannot overcome the mistreatment received by Stallworth at the hands of the Liberty County School System." This statement prompts several questions which the court's findings of fact do not answer. For example, why did the Stallworth evidence outweigh the named plaintiffs' own testimony that Liberty County officials were responsive? If Liberty County officials are unresponsive to black concerns, to what extent are they unresponsive? Ultimately, how does this lack of responsiveness affect minority access to the political process?

9. Tenuous State Policy. The district court found that the state policy behind the challenged at-large electoral systems is well established and therefore is not tenuous. The court, however, made no findings of fact as to what the policy is. In particular, the court did not explain how the state could be committed

to a policy of having at-large elections given that its legislature has authorized the counties to abolish them. See Fla. Stat. § 124.011 (1987) (county commissions); id. § 230.105 (school boards). on remand, the court must answer these questions or explain why answers to them would be of no moment.

10. Other Factors. The nine totality of circumstances inquiries were never meant to be an exclusive list of all of the inquiries that a court should make in a vote dilution case. As the Supreme Court observed in Gingles, "[t]he [Senate] Report stresses [] that this list of typical factors is neither comprehensive nor exclusive. While the enumerated factors will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims, other factors may also be relevant and may be considered." Gingles, 478 U.S. at 45, 106 S.Ct. at 2764

(footnote omitted). The district court identified three such additional factors during the proceedings below. The first of these, the demographics of the black population, we have already discussed in the context of the other totality of circumstances inquiries. The other two deserve separate discussion.

The court believed that the political importance of the black swing vote in Liberty county should be considered in assessing the validity of the challenged electoral systems because, in the court's view, the goal of the Voting Rights Act is to maximize black political power. Thus, the court found that since blacks constitute an eagerly sought "swing vote" in county elections, all countywide political candidates and representatives are politically responsive to black voter interests. The court further found that although black voters would be able to

elect one representative under the proposed single-member district plan, total political responsiveness to black interests would be lessened since the other four officials (on the commission and the school board) would no longer owe black interests any degree of responsiveness. The court therefore concluded that the current at-large electoral systems better met the purposes of the Voting Rights Act. Because we find that the court misunderstood the purpose of the Voting Rights Act, we need not question the accuracy of the court's judgment as to the political realities of Liberty County.

If we were writing on a clean slate, the district court's interpretation of the Act might well be persuasive; the settled state of the law, however, clearly leads us in another direction. Today, the goal of section 2 is not to maximize the

political clout of minorities, but rather to ensure minority representation in government. Thus, the amended Voting Rights Act directs the courts' attention to the question of whether "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." S. Rep. No. 417, 97th Cong., 2d Sess. 28, reprinted in 1982 U.S. Code Cong. & Admin. News 177, 206 (emphasis added). Whatever the wisdom of this policy -- and even if such a policy actually reduces the overall political responsiveness to minority needs -- the policy choice belongs to Congress. We therefore conclude that the district court erred in holding that because the current at-large election method better met the purpose of the Voting Rights Act than would a single-member district

method, the continued use of the at-large method did not violate the Act.

[23] The third additional factor deemed pertinent concerned the plaintiffs' commitment to this litigation. The court noted that "many members of the plaintiff class, and some of the named plaintiffs, have either become equivocal or are downright opposed to the maintenance of this law suit." While this might be relevant to the adequacy of the class representation, we hold that class opposition to the remedy that may result from the successful litigation of a section 2 claim is irrelevant in weighing the totality of circumstances. The district court therefore erred in considering it.

IV.

We vacate the judgments of the district court and remand these cases for

further proceedings consistent with the views expressed in this opinion.

VACATED and REMANDED, with instructions.

HILL, Circuit Judge, specially concurring:

I concur in the court's judgment.

FOOTNOTES

[1] These cases were originally brought separately. In No. 87-3406, the plaintiffs challenged the at-large system for electing the county commission; in No. 87-3406A, they challenged the at-large system for electing the school board. The district court consolidated the cases for trial.

[2] In No. 87-3406A, the plaintiffs also alleged that the challenged electoral systems violated the fourteenth and fifteenth amendments. These constitutional claims are not before us on appeal.

[3] Section 2 of the Voting Rights Act of 1965, as amended, states that:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State

> or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.
>
> 42 U.S.C. § 1973 (1982).

11

The first part of the second question-- whether the minority group could constitute a majority in a single-member electoral district -- is a straightforward, objective inquiry into the size and geographic distribution of the minority group. If plaintiffs cannot establish an affirmative answer to this question, then the court need not proceed to the far more involved issues of minority electoral cohesiveness, bloc voting, and the other totality of circumstances inquiries. Thus, judicial economy demands that this question be placed in a threshold position, rather than in its usual place in the remedy stage of the litigation.

12

Of course, the resulting single-member electoral system must achieve a more proportional representation of

minorities than did the previous multimember system. For example, assume a community that has a 40 percent minority population and is governed by a five-member commission elected at-large from a multi-member district. If the community had never elected a minority representative, then plaintiffs could establish the first two Gingles elements by proving that the minority could dominate one of the five created single-member districts. If, however, the community had habitually elected one minority representative, the plaintiffs would have to establish that under a single-member district structure the minority would be able to elect more representatives.

u

By making this statement, we do not mean to imply that the plaintiffs never challenge an election that has already occurred. In theory, plaintiffs can do so; whether they can obtain injunctive relief -- in the form of a restructured electoral system and new elections, however, is problematic. To obtain such relief, the plaintiffs would have to overcome the defense of laches -- by proving that they had not slept on their rights. In the cases before us, appellants seek to enjoin future elections under electoral systems they claim are discriminatory.

u

Thus, in Gingles the Court stated:

the most important Senate Report factors bearing on § 2 challenge to multimember districts are the "extent to which minority group members have been elected to public office in the

jurisdiction" and the "extent to which voting in the elections of the state or political subdivision is racially polarized." If present, the other factors, such as the lingering effects of past discrimination, the use of appeals to racial bias in election campaigns, and the use of electoral devices which enhance the dilutive effects of multimember districts when substantial white bloc voting exists -- for example antibullet voting laws and majority vote requirements, are supportive of, but not essential to, a minority voter's claim.

Gingles, 478 U.S. at 48 n. 15, 106 S.Ct. at 2766 n. 15 (citation omitted) (emphasis in original). We note that minority electoral success or failure will be an inherent element in any evidence presented as to vote polarization.

We note, however, that even in the face of compelling vote polarization evidence, a prudent trial court would still perform the other totality of circumstances inquiries. The corroborating evidence produced by these inquiries might salvage the court's decision should a reviewing court later disagree with the trial court's legal conclusion with respect to the sufficiency of the direct evidence -- usually, as here, in the form of statistics and expert opinion -- of vote polarization.

In light of our disposition of these appeals, we do not address the fourth question in our method of analysis.

[17]

In concluding that blacks would constitute 51% of the voting age population of District 1, we rely on appellants' evidence, which was not contested by the appellees. On remand, the district court may make further inquiries into the exact demographics of the proposed District 1 to ensure that blacks will constitute a majority of its voting age population.

[18]

We note also that the white crossover demonstrated in these cases is sufficient to compensate for any disparities between the black voting age population of District 1 and the politically cohesive black voting age population of District 1.

These six elections involved four candidacies:

Date	Election	Candidate
May 7, 1968	School Board, District 1 (1st Primary)	Charles Berrium
Sept. 9, 1980	School Board, District 1 (1st Primary)	Earl Jennings
Oct. 7, 1980	School Board, District 2 (2d Primary)	Earl Jennings
Sept. 4, 1984	County Comm'n, District 1 (1st Primary)	Gregory Solomon
Oct. 2, 1984	County Comm'n, District 1 (2d Primary)	Gregory Solomon
Sept. 4, 1984	School Board, District 1 (1st Primary)	Earl Jennings

[17]

In this opinion we use an "average correlation" value only for the sake of convenience.

[18]

Appellants' regression analysis of votes received by black candidates for countywide office is as follows:

	ELECTION	PERCENT VOTE RECEIVED BY BLACK CANDIDATES PER PRECINCT/PERCENT BLACK REGISTERED VOTERS PER PRECINCT
1.	May 1968 School Board Berrium	.996
2.	September 1980 School Board Jennings	.578
3.	October 1980 School Board Jennings	.280
4.	September 1984 County Commission Solomon	.989
5.	October 1984 County Commission Solomon	.962
6.	September 1984 School Board Jennings	.919

[17]

Appellants' regression analysis of votes received by black candidates in state and national elections produced the following results:

ELECTION	PERCENT VOTE RECEIVED BY BLACK CANDIDATES PER PRECINCT/PERCENT BLACK REGISTERED VOTERS PER PRECINCT
1. September 1970 Democratic Primary U.S. Senate Hastings	.917
2. March 1972 Democratic Presidential Primary Chisholm	.998
3. March 1984 Democratic Presidential Primary Jackson	.983

Appellants' regression analysis of votes received by identified candidate or election issue in elections with a racial political content produced the following results:

	ELECTION	PERCENT VOTE RECEIVED BY IDENTIFIED CANDIDATES PER PRECINCT/PERCENT BLACK REGISTERED VOTERS PER PRECINCT	
1.	November 1968 Presidential Wallace, Humphrey Nixon	Humphrey	.972
2.	November 1970 Governor Askew-Kirk	Askew	.847
3.	March 1972 Straw Ballot Busing		.901
4.	November 1976 Presidential McGovern, Nixon	McGovern	.984

	ELECTION	PERCENT VOTE RECEIVED BY IDENTIFIED CANDIDATES PER PRECINCT/PERCENT BLACK REGISTERED VOTERS PER PRECINCT	
5.	November 1976 Presidential Carter-Ford	Carter	.876
6.	November 1980 Presidential Carter-Reagan	Carter	.935
7.	November 1984 Presidential Mondale-Reagan	Mondale	.961

[17]

Appellees' expert, Charles Billings, a colleague of St. Angelo's at Florida State University, did not contest the accuracy of St. Angelo's results, but instead maintained that the use of bivariate analyses was generally inappropriate in vote dilution cases. Whether the use of such analyses is appropriate in vote dilution cases is a legal question as to which we give Professor Billings' opinion no deference.

[18]

Evidence relating to Jennings' 1980 candidacy may not be a reliable indication of an absence of black electoral cohesiveness. The district court determined that Jennings was backed by the white establishment in his 1980 candidacy. Jennings, therefore, may not have been the black community's chosen candidate. See infra notes 31-32 and accompanying text.

[19]

We note that the terms "racial polarization," "electoral cohesiveness," and "bloc voting" all refer to the same phenomenon. The distinction is one of connotation: "electoral cohesiveness" is generally used in reference to minority voting; "bloc voting" is generally used in reference to white voting habits, and is a pejorative; "racial polarization" is an umbrella term.

[20]

We have already noted that if the small number of minority candidacies prevents the compilation of statistical evidence, the court should not deny the plaintiffs relief; rather, the court should rely on the other totality of circumstances factors to determine if the electoral system has a discriminatory

effect. See supra notes 7-8 and accompanying text. Thus, even if we were to conclude that Professor St. Angelo's reliance on data from other elections was improper, the statistical evidence adduced from the six elections involving a minority candidacy could be sufficient when combined with the rest of the totality of circumstances to establish a violation of section 2.

[11]

See table reproduced supra at note 15.

[12]

See table reproduced supra at note 16.

[13]

The district court addressed the issue of whether the challenged electoral practices were adopted or maintained with the intent to discriminate in the context of the ninth totality of circumstances inquiry -- whether the policies behind the enactment of the challenged electoral systems were tenuous. Since we view this issue as relating to the history of discrimination, we address the court's findings of fact at this point in our discussion.

[14]

We have already noted that direct evidence of present discriminatory motivation in the enactment or maintenance of an electoral system will establish a violation of the Voting Rights Act without the need for circumstantial evidence. See supra text accompanying note 6.

[11]

The method St. Angelo used assumed that the racial voting pattern in the almost all-white precincts would be typical of the racial voting patterns in the county as a whole. The district court relied on this fact to discredit the appellants' statistical evidence because it found wide disparities between the socioeconomic conditions in the various precincts in Liberty County. The court, however, provided no specific factual basis for this finding, nor can we find one in the record. Absent proof that such an assumption of uniform racial voting patterns is invalid, we hold that St. Angelo's method did not invalidate the legal significance of his analysis.

[11] Appellants' Racial Polarization Index found as follows:

Election	Percentage Vote Received by Black Candidate from Black Voters	Percentage Vote Received by Black Candidate from White Voters	Racial Polarization Index
1. May 1968 School Board (1st Primary)	100.0%	2.8%	97.2
2. September 1980 School Board (1st Primary) Earl Jennings	44.7%	17.0%	27.7
3. October 1980 School Board (2d Primary) Earl Jennings	64.7%	40.5%	24.2

	Election	Percentage Vote Received by Black Candidate from Black Voters	Percentage Vote Received by Black Candidate from White Voters	Racial Polarization Index
4.	September 1984 County Comm'n (1st Primary) Gregory Solomon	74.7%	18.8%	55.9
5.	October 1984 County Comm'n (2d Primary) Gregory Solomon	90.0%	32.9%	57.1
6.	September 1984 School Board (1st Primary) Earl Jennings	78.2%	14.5%	63.7

[17]

Appellees' offered the expert testimony of Professor Billings to refute Professor St. Angelo's testimony. Professor Billing's evidence consisted of his opinion, based on interviews with Liberty County residents, that voting in Liberty County is not racially polarized. The district court attached no weight to this opinion, nor do we.

[18]

See table reproduced supra at note 26. The column captioned "Percentage Vote Received by Black Candidate by White Voters" constitutes the white crossover.

[19]

Our average includes the two elections in which no significant levels of vote polarization were found; these elections had the highest level of crossover. Arguably, our average could exclude these elections as aberrations and still be within the legal standards of section 2. See supra notes 18-19 and accompanying text.

[20]

Liberty County is 89% white. 21% of 89% is 18.5%.

[21]

A slating process is a procedure by which a political group determines the candidates that they will sponsor for particular offices. The resulting candidacies compose that group's "slate."

[22]

Professor St. Angelo testified that blacks did not vote for Jennings in the 1980 election because Jennings was urged to run by one of the white candidates;

some blacks even believed that the white candidate had paid Jennings' filing fee. We, of course, cannot and do not make a finding of fact on this matter. Our discussion is intended only to illustrate how findings on one issue will often affect findings as to another.

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

GREGORY SOLOMON, et al.,

Plaintiffs,

v. CASE NOS. TCA 85-7009-MMP
TCA 85-7010-MMP

LIBERTY COUNTY, FLORIDA,
et al.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The named plaintiffs in this cause are four black citizens who are residents and registered voters of Liberty County, Florida. On behalf of themselves and the certified class of all black residents of Liberty County, Florida, they seek injunctive and declaratory relief against at-large countywide elections for members of the Liberty County School Board and the Liberty County Commission. Plaintiffs allege that the at-large election of members of the Liberty County Commission

unlawfully dilutes black voting strength in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. Similarly, plaintiffs allege that the at-large election of members of the Liberty County School Board unlawfully dilutes black voting strength in violation of Section 2 of the Voting Rights Act, as well as the Fourteenth and Fifteenth Amendments to the United States Constitution. The defendants in this cause are the Liberty County School Board, the five Liberty County School Board members, and their successors and agents in office, all of whom are sued solely in their official capacities, as well as Liberty County, Florida, the five Liberty County Commissioners, and their successors and agents in office, all of whom are also sued solely in their official capacities.

Pursuant to Rule 42(a), Federal Rules of Civil Procedure, at the request of all

parties, the two cases herein were consolidated for trial. A non-jury trial was conducted from March 25 to March 28, 1986. On the basis of the testimony and exhibits presented at trial, facts admitted by the parties prior to trial, and review of the pleadings and post-trial submissions of the parties, the Court makes the following findings of fact and conclusions of law pursuant to Rule 52(a), Federal Rules of Civil Procedure. Unless otherwise indicated, the Court's findings and conclusions apply with equal weight to each case.

I. GENERAL BACKGROUND.

Liberty County, Florida is located in Northwestern Florida, within the Northern District of Florida. It has a population of 4260, of which 471, or 11.06 percent, are black.

The five members of the Liberty County School Board are elected at-large

from five residency subdistricts and serve four-year terms. Fla. Stat. Ann. §§ 230.05-230.10 (West 1977 & Supp. 1986). Candidates run for numbered seats corresponding to the districts in which they live, but each must be elected by the voters of the entire county. Both the primary and the general elections are conducted at-large. A majority of the votes cast is necessary to avoid a runoff in the primary. In the general election, however, there is no majority vote requirement.

The five members of the Liberty County Commission are elected for staggered four-year terms in at-large elections. Under this system, as with the school board, candidates run for numbered seats corresponding to the districts in which they live, but each must be elected by the voters of the entire county. Again, a majority vote is required to

avoid a runoff in the primary, but not to win the general election.

There have been only four black candidacies for countywide elected office in Liberty County. Charles Berrium in 1968, and Earl Jennings in 1980 and 1984, ran for seats on the school board. Also in 1984, Gregory Solomon ran for a seat on the Liberty County Commission. None of these black candidacies was successful.

II. BLACK POLITICAL PARTICIPATION IN LIBERTY COUNTY - TYPICAL FACTORS.

Both the trial presentation and the post-trial submissions conformed substantially to the structure of those "typical factors" enumerated in the Senate Report on the 1982 amendment to Section 2 of the Voting Rights Act, S. Rep. No. 417, 97th Cong., 2d Sess. 28, reprinted in 1982 U.S. Code Cong. & Ad. News 177, 206, and applied in United States v. Marengo County Commission, 731 F.2d 1546 (11th Cir.),

cert. denied, 469 U.S. 976 (1984), and United States v. Dallas County Commission, 739 F.2d 1529 (11th Cir. 1984). This Court's findings will be similarly structured.

1. History of Official Discrimination Affecting Black Political Participation.

Plaintiffs presented the expert testimony of Dr. Jerrell Shofner to establish a long history of extensive official discrimination in Florida, and in Liberty County particularly. A pervasive official policy of restricting the opportunities of blacks to register, vote, and otherwise participate in the election process was shown. This testimony is irrefutable, and defendants have made no serious attempt to challenge plaintiffs' proof on this issue. It is unnecessary to enumerate specific findings on each element of this official policy -- the

Court simply finds that North Florida and Liberty County have a long history of extensive official discrimination affecting the rights of blacks to participate in political processes.

2. Racially Polarized Voting.

Plaintiffs offered the expert testimony of Dr. Douglas St. Angelo to prove that voting in Liberty County is racially polarized. In his analysis of Liberty County voting behavior, Dr. St. Angelo utilized statistical methods, including a bi-variate regression analysis. This technique examined the correlation between the percentage of voters of one race in a voting precinct and the percentage of votes received by the identified candidate. The product of this analysis is a regression coefficient, or "R," which can range from 0 to 1. An R of 0 indicates that there is no relationship between the first variable,

race, and the second variable, election results. An R of 1 indicates that the two variables are perfectly related. Dr. St. Angelo testified that an R of .3 or .4 would be statistically significant, an R of .5, .6, or .7 would be an extremely high correlation, and an R of .9 would be an extraordinarily high correlation.

Dr. St. Angelo performed this analysis on three types of elections between 1968 and 1984. Specifically, he examined the six elections for countywide office in which black candidates ran, three state and national elections in which black candidates ran, and seven state and national elections said to have involved either candidates or issues with a racially political content.

The regression analysis of black candidacies for countywide office yielded an R in excess of .9 in four of the six elections. The other two were .578 and

.280. Dr. St. Angelo concluded from this analysis that voting in Liberty County when a black candidate is running shows a high degree of racial polarization. The remaining two groups of elections were then analyzed to confirm this conclusion. In the three state and national elections in which there were black candidates, each yielded an R in excess of .9. In the third group of seven selected state and national elections, an R in excess of .8 was found in two elections, and an R in excess of .9 was found in the other five. Dr. St. Angelo concluded that these elections also demonstrated a high degree of racial polarization in Liberty County. His ultimate conclusion, therefore, was that in a wide variety of elections, voting in Liberty County is racially polarized.

Dr. St. Angelo also used a second statistical method to analyze voting

polarization in Liberty County. He computed a racial polarization index by determining the percentage of votes cast by black voters for a black candidate, and then subtracting the percentage of votes cast for the same candidate by white voters. This analysis was applied to corroborate the findings derived from the bi-variate regression analysis. Dr. St. Angelo concluded that the results of the racial polarization index do support the conclusion drawn from the bi-variate regression analysis -- that voting in Liberty County is racially polarized.

Defendants offered the expert testimony of Dr. Charles Billings to challenge Dr. St. Angelo's conclusions. Dr. Billings testified that the statistical methods used by Dr. St. Angelo were inappropriate, and, in his opinion, could not accurately measure racial polarization in Liberty County.

In Thornburg v. Gingles, 106 S. Ct. 2752 (1986), the Supreme Court construed "for the first time § 2 of the Voting Rights Act of 1965, as amended June 29, 1982." Id. at 2758. A major portion of the Court's opinion deals with the standard for "legally significant" racial bloc voting. Id. at 2769-70. Although the Court attempted to give some direction to this inquiry, the following statements represent the Court's bottom line: "As must be apparent, the degree of racial bloc voting that is cognizable as an element of a § 2 vote dilution claim will vary according to a variety of factual circumstances. Consequently, there is no simple doctrinal test for the existence of legally significant racial bloc voting." Id. at 2770.

The Court has no doubt that Dr. St. Angelo's analyses reflect some statistically significant degree of racial

polarization as he understood that term. It is this Court's findings, however, that the overall degree of racial polarization, as the Court understands that term, has not been proved to be legally significant, within the context of this case. Several factors have contributed to this finding.

Dr. St. Angelo's testimony indicated that his statistical methods sought only some mathematical correlation between the chosen variables. Further, he only examined his correlation between two variables -- percentage of votes received by the black identified candidates, and percentage of black registered voters. On cross-examination, defendants questioned Dr. St. Angelo on a variety of other variables which could explain the correlation he found. Dr. St. Angelo had investigated no other variables. His consistent reply to this line of questioning was that polarization could be

explained by many factors, but is presence is undeniable. He testified that while the variables proposed by defendants might explain his finding of polarization, they had no effect on its credibility. Consequently, Dr. St. Angelo has made it clear, both in terms of his formula and in his testimony before this Court, that he sought only a raw statistical correlation between the two variables he chose. Upon find such a correlation, he made no attempt to determine whether race was actually the determinative variable in the voting patterns.

Defendants challenged Dr. St. Angelo's testimony for its failure to prove that race was the motivating factor in the statistical correlation he discovered. Such a challenge is based on arguments best expressed by Judge Higginbotham in his concurrence in Jones v. City of Lubbock, 730 F.2d 233 (5th Cir.

1984). This type of challenge to statistical evidence of racial polarization has now been precluded by the opinions in Thornburg. Part III-C of Justice Brennan's opinion, joined by only three other justices, rejected the same arguments advanced by defendants herein. After addressing those arguments at length, Justice Brennan stated the following conclusion:

> In sum, we would hold that the legal concept of racially polarized voting, as it relates to claims of vote dilution, refers only to the existence of a correlation of certain candidates. plaintiffs need not prove causation or intent in order to prove a prima facie case of racial bloc voting and defendants may not rebut that case with evidence of causation or intent.

Thornburg, 106 S.Ct. at 2779. Justice O'Connor's concurring opinion was also joined by three other justices. Addressing Part III-C of Justice Brennan's opinion, Justice O'Connor's opinion states:

> Insofar as statistical evidence of divergent racial voting patterns is admitted solely to establish that the minority group is politically cohesive and to assess its prospects for electoral success, I agree with the plurality that defendants cannot rebut this showing by offering evidence that the divergent racial voting patterns may be explained in part by causes other than race, such as an underlying divergence in the interests of minority and white voters.

Id. at 2792 (O'Connor, J. concurring). The bare statistical correlation contemplated by Justice Brennan's opinion is precisely what was sought to be established through Dr. St. Angelo's testimony. It is clear that the Thornburg opinions render this specific challenge to Dr. St. Angelo's testimony meritless.

The Court, however, has its own concerns about Dr. St. Angelo's regression analysis is the fact that, by its own terms, it only seems to measure the polarization of the black vote. It is apparent from the reported cases that such

is the usual case. Nevertheless, since the Voting Rights Act is aimed at protecting minority political participation, it seems that white voting behavior is at least as relevant, if not more so, than black voting behavior. While polarization of black voters may be a significant indication of the racial political character of an area, a black minority will never be effectively disenfranchised by its own bloc voting. Instead, it is the majority's bloc voting in an at-large system which poses that threat. It is noteworthy that the Thornburg opinions focus on polarization of the majority vote, and that plaintiffs' expert in Thornburg apparently subjected white voter behavior to the same statistical analyses which had been applied to black voter behavior. Thornburg, 106 S.Ct. at 2767-2772.

An examination of the election return from Liberty county shows that black candidates receive substantial support from precincts with little or no black registration. Furthermore, in contrast to much of Dr. St. Angelo's analysis which depends on inferences and assumptions, there is no doubt that black candidates receive white votes; the vote totals for black candidates in the substantially all-white precincts greatly exceeds the black registration.

Dr. St. Angelo's racial polarization index directly supports the Court's position on white polarization. The index takes into account the percentage of white votes received by the black candidate, and the raw figures which represent that support are significant percentages in every election except one. This degree of white support is precisely why the racial polarization index figures are much more

moderate than the regression analysis figures.

Dr. St. Angelo's regression analysis was limited by the fact that there have been only four black candidacies for countywide office in Liberty County. Only three black citizens have offered themselves for election. This is not a case, therefore, in which black candidates have a long history of consistent failure. Of the six elections in which there were black candidates, one was found to have not even a statistically significant degree of racial polarization. This was the October 1980 school board election in which Jennings was a candidate. As noted by the Court in Thornburg, "a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election." Id. at

2770. Explaining further, the Court stated:

> The number of elections that must be studied in order to determine whether voting is polarized will vary according to pertinent circumstances. One important circumstance is the number of elections in which the minority group has sponsored candidates. Where a minority group has never been able to sponsor a candidate, courts must rely on other factors that tend to prove unequal access to the electoral process. Similarly where a minority group has begun to sponsor candidates just recently, the fact that statistics from only one or a few elections are available for examination does not foreclose a vote dilution claim.

Id. n.25. Obviously, this first group of elections which Dr. St. Angelo analyzed is the most relevant, if not the only relevant group. It seems equally as obvious that the small number renders any statistical conclusions much less probative than plaintiffs argue.

Apparently, plaintiffs would concede this point; the small number of directly relevant elections explains Dr. St.

Angelo's reliance on analysis of selected state and national elections to support his findings and conclusions. The Court has several problems with his choice of elections. Initially, the last four general elections for president admittedly contained no overt racial issues. Dr. St. Angelo found that the black vote was polarized around identified candidates in each of those elections -- McGovern, Carter, Carter, and Mondale. The election results show that President Carter received a majority vote in every precinct in Liberty County in both 1976 and 1980, with but a single exception. As for the Askew-Kirk race for governor of Florida in 1970, Dr. St. Angelo found that the black vote was polarized in favor of Askew. The election returns from Liberty County, however, show that Askew won every precinct. Rather than supporting Dr. St. Angelo's finding of polarization, these

elections support the Court's finding of a flaw in his analysis. Dr. St. Angelo can show a correlation between black registration and the black vote received by some candidate in almost any election. Assuming his analysis is entirely correct, he seems simply to have demonstrated that black voters vote largely as a block, whether it is for a black candidate or a white candidate, and whether it is in accord with the white preference or not. These elections also support the Court's finding that the white vote is much less polarized that the black vote.

Addressing Dr. St. Angelo's racial polarization index, the Court is troubled by the necessity of inferences at every step of the formula. The results were arrived at after a long and involved computation during which a number of assumptions and inferences were made. While such an analysis invites error

generally, some specific problems can be pointed out in this case.

The voting patterns of whites in precincts one and two, the mixed precincts, were calculated on the basis of white voting patterns in precincts, three, four, five, six, and seven, in which there are very few blacks. This is of dubious validity in light of two characteristics of Liberty County which were shown at trial. First, it is an expansive county, encompassing vast rural areas as well as several small towns and communities. It cannot be assumed that the various citizens of Liberty County have concurrent political interests. Second, plaintiff Solomon himself testified that the white residents of precincts one and two are more "tolerant" in general than residents of the predominantly white areas of Liberty County. The Court draws two conclusions from these characteristics.

First, any attempt to project voting behavior in one precinct on the basis of voting behavior in another precinct, under the circumstances present in Liberty County, is necessarily speculative. Second, the evidence in this case demonstrates affirmatively that if racial considerations are determinative, voting behavior of whites in precincts one and two cannot be accurately predicted from the voting behavior in the other precincts.

The Court has previously concluded that the numbers generated by Dr. St. Angelo's racial polarization index do not support plaintiffs' position, but rather support the Court's finding of no racial polarization. See supra p. 9. The Court also finds that those numbers cannot be relied upon as accurately reflecting real voting behavior in Liberty County; actual figures could vary greatly and be even

more favorable to defendants than the Court has found these figures.

For the foregoing reason, the Court finds that voting in Liberty County is not racially polarized.

3. Enhancing Factors.

"A vote dilution case 'is enhanced by a showing of existence of large districts, majority vote requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographical subdistricts.'" Marengo County, 731 F.2d at 1570 (quoting Zimmer V. McKeithen, 485 F.2d 1297,1305 (5th Cir. 1973)(en banc), aff'd per cirium sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976). Candidates for both the Liberty County Commission and the Liberty County School board must run for one of five numbered seats corresponding to the

district in which they reside. Because of this requirement, an anti-single-shot provision would be irrelevant. Marengo County, 731 F.2d at 1570-71 n.45. There is a majority vote requirement to win the party nomination, but not the general election. Liberty County does present a vast area to cover in an at-large campaign, and this factor could work to the detriment of black candidates because of their lower average income. On balance, the Court that finds these features of the Liberty County election system may enhance the opportunity to discriminate against blacks in the election process.

4. Candidate Slating process.

Plaintiffs have established that there exists in Liberty County some very informal, unofficial candidate slating process. That process consists of candidates aligning themselves with other

candidates in what is referred to as a "lineup." These slates of candidates are aligned with the large entrenched families of Liberty County, and usually include members of those families. The only evidence of whether this process is open to blacks was offered by Solomon. He testified that Jennings had been in a lineup in his 1980 campaign for school board, and that that particular lineup had failed to achieve its goal of defeating the incumbent Hornsby. The Court cannot conclude, on the basis of this record, that blacks have been denied access to this informal process.

5. Lingering Effects of Past Discrimination.

The Senate Report states this factor in the following terms: "the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as

education, employment and health, which render their ability to participate effectively in the political process." S. Rep. No. 417, 97th Cong., 2d Sess. 29, reprinted in 1982 U.S. Code Cong. & Ad. News at 177, 206 (emphasis added). The Court reads this factor to direct consideration of only those lingering effects of past discrimination "which hinder their ability to participate effectively in the political process." The Senate Report includes a footnote at the end of this factor, the content of which further supports the Court's interpretation:

> The courts have recognized that disproportionate educational employment, income level and living conditions arising from past discrimination tend to depress minority political participation . . . . Where these conditions are shown, and where the level of black participation in politics is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the

> depressed level of political participation.

Id. (citations omitted). At least according to the Senate Report, therefore, the focus of this factor is on depressed political participation and not on depressed socio-economic status. Other courts share this interpretation. After finding black political participation generally to be at least equal to that of whites, the district court in McCord v. City of Ft. Lauderdale, 617 F. Supp. 1093 (S.D. Fla. 1985), stated: "Consequently, although the court received evidence presented by plaintiff in [the areas of education, employment, and health], the qualification in the Senate report of effects 'which hinder their ability to participate effectively in the political process' makes such evidence irrelevant as a practical matter". 617 F. Supp. at

1103-04; see also Marengo County, 731 F.2d at 1567.

Plaintiffs presented evidence to demonstrate that blacks in Liberty County currently bear the effects of past discrimination in areas such as education, employment, and health. The evidence does not indicate, however, that black political participation has been stifled by those effects. Indeed, the evidence indicates that the opposite is true. Voter registration is very high in Liberty County, and there is evidence that since 1981, when the registration books were purged for the first time in several years, black registration percentage has exceeded white registration percentage. There is no evidence presented that black turnout is substantially different from white turnout.

Plaintiffs rely heavily on the fact that only three black candidates have ever

sought countywide office in Liberty County. The Court places greater significance, however, on the fact that there have been three black candidacies since 1980. Two of those candidacies were successful enough to reach a second primary wherein the black candidates each received over forty-one percent of the votes cast. Blacks in Liberty County have made significant and increasing efforts since 1980 to win election to countywide office.

Defendants took the very direct approach of simply asking witnesses what impediments existed in Liberty County to black political participation. Several witnesses answered that there are no obstructions to black voter registration, no obstructions to black voting, no obstructions to blacks having their votes fairly counted, and no obstructions to

blacks qualifying to run for public office.

The evidence in this case indicates a lower average income for black families than for white families, and the Court is aware that income often affects political opportunities. The nature of Liberty County politics, however, does not seem to demand great financial expenditures. The predominant campaign approach is door-to-door solicitation of support. In addition, the Democratic Executive Committee has sponsored rallies to which all candidates were invited and which the black candidates attended. These campaign methods are particularly well-suited to Liberty County's sparse population, as well as its general economic conditions.

The Court finds, therefore, that there is no significant impediment to black political participation in Liberty County, and that black political

participation in recent years has been substantial.

6. Racial Appeals.

The sixth factor is whether political campaigns have been characterized by overt or subtle racial appeals. There is no evidence before this Court to suggest that recent campaigns have been so characterized. Plaintiffs have presented evidence of overt racial appeals in Liberty County during the 1956 presidential primary campaign, a 1956 state senate campaign, and a 1958 campaign for the state legislature. The Court is not persuaded by this evidence. In all probability, some evidence of racial appeals could be produced for every election in the South in 1958. The history of official discrimination in Liberty County has already been found and will be given appropriate consideration. The question is how far has Liberty County

progressed since 1958. Plaintiffs introduced no substantial evidence to suggest that recent campaigns have been characterized by racial appeals.

The evidence suggests that race has not been an issue in recent Liberty County campaigns. On cross-examination, Solomon testified that it would have been foolish for either Jennings or himself to base their candidacy on the representation of the black community. As for the white candidates, every witness who addressed the issue except Dr. St. Angelo, testified that the black vote in Liberty County is essential for election. Regardless of Dr. St. Angelo's testimony, the citizens of Liberty County believe that an election cannot be won without black support. It is apparent, therefore, that in recent years any candidate, whether white or black, would have been ill-advised to rely on racial appeals to win a Liberty County

election. In any event, no such appeals have been shown to have occurred.

7. Election of Minorities.

Not a single black citizen has ever been elected to countywide office in Liberty County.

8. Lack of Responsiveness.

Both the Senate Report and the case law indicate that unresponsiveness of elected officials to minority needs is less important than other, more objective factors. See Marengo County, 731, F.2d at 1572. Indeed, the Senate Report indicates that unresponsiveness is not an essential part of plaintiffs' case. S. Rep. No. 417, 97th Cong., 2d Sess. 29 n.116, reprinted in 1982 U.S. Code Cong. & Ad. News at 117, 207 n.116. Both plaintiffs and defendants, however, have produced evidence on this factor.

Plaintiff first attempted to establish a lack of responsiveness by

directly questioning witnesses on the quality, and equality, of services received by the black community. The imbalances pointed out are not substantial and do not evidence a significant lack of responsiveness.

Defendants offered proof of their responsiveness through testimony that Liberty County elected officials, at least those defendants herein, are approachable and sensitive to the particularized needs of black citizens. This testimony is persuasive because it was elicited not from defendants, but from named plaintiffs.

Finally, plaintiffs rely on this Court's findings and conclusions in Stallworth v. Shuler, 35 F.E.P. 770 (N.D. Fla. 1984), aff'd, 777 F.2d 1431 (11th Cir. 1985). During the course of the trial of that case, a former superintendent of the Liberty County

Schools testified that "appointing a black principal would harm a Superintendent politically." Id. at 772. Consequently, he never considered a qualified black candidate for such position. This court found that the defendants, the Liberty County School Board and the two most recent Superintendents, had indulged in deliberate racial discrimination in employment. As to the Liberty County School Board, the Stallworth decision demonstrates a serious and significant lack of responsiveness.

While the Court finds defendants' evidence of responsiveness significant and persuasive, that evidence cannot overcome the mistreatment received by Stallworth at the hands of the Liberty County School System. Plaintiffs have proved a significant lack of responsiveness to the interests of blacks by Liberty County's elected officials.

9. Tenuous State Policy.

The final factor enumerated in the Senate Report is whether the policy underlying the questionable practice is tenuous. Plaintiffs correctly concede that there was no racial motivation behind the 1901 amendment to the Florida Constitution which provided for at-large election of county commissioners. McGill v. Gadsden County Commission, 535 F.2d 277, 281 (5th Cir. 1976). Yet plaintiffs contend that the state policy has now shifted in favor of single-member districts. This shift in policy is evidenced by the 1982 change from multi-member to single-member districts for the Florida Legislature. Fla. Stat. Ann. §§ 10.101-10.103 (West Supp. 1986), and the 1984 legislation which provides the option of changing from what had been mandatory at-large elections to single-member districts. Id. § 124.011 (county

commissioners) and § 230.105 (school board members).

The Court cannot agree with plaintiffs' assertion that Liberty County's at-large election of county commissioners is contrary to Florida's state policy. The 1984 legislation simply allows single-member districts, it does not mandate them. Apparently, Liberty County has elected its commissioners in accordance with state law for at least 86 years. The policies underlying these at-large elections are not tenuous.

Plaintiffs correctly point out that the 1947 legislation changing the democratic primary election for school boards from single-member to at-large was racially motivated. NAACP v. Gadsden County School Board, 691 F.2d 978, 982 (11th Cir. 1982). Only since 1984, however, has Liberty County had the power to change from an at-large system to

single-member districts. There is nothing in the record to suggest that Liberty County's maintenance of the at-large democratic party for school board since 1984 has been racially motivated. The Court cannot find that the policy underlying the at-large democratic primary for Liberty County School Board is tenuous. It has been 40 years since the state legislature mandated such a system with an improper motive, and only three years since the Liberty County School Board was first given authority to alter the system. Under these circumstances, even if the original racial motivation of the Florida Legislature was imputed to the Liberty County School Board 40 years later, this Court would not be inclined to give substantial consideration to this factor.

As the Court has already found with respect to the county commission, the

recent legislative enactments have not left state policy at odds with Liberty County's at-large school board elections.

III. ADDITIONAL FACTORS

The evidence presented at trial suggested several factors other than those enumerated in the Senate Report which are operative in Liberty County. Although these factors may overlap the Senate Report's typical factors to some extent, they are treated separately because of their unique factual significance in this case.

1. Black Population and Residency in Liberty County.

This case differs from the usual Voting Rights Act case, in that the minority constitutes such a small proportion of the total population. Only 471 blacks live in Liberty County -- only 11.06 percent of the total population. The residency districts in Liberty County

were changed in 1985 pursuant to a plan proposed by plaintiffs. The new districts are almost perfectly proportional, ranging in population from 827 to 863. The black population of Liberty County is concentrated almost exclusively in District I, where 423 black reside. Despite this concentration, blacks still comprise only 49 percent of the total population of District I, and only 46.2 percent of the registered voters in District I. There are less than fifty blacks living in the other four districts combined. The black population in Liberty County, therefore, is negligible in all districts except one, where it is a substantial minority.

Plaintiffs developed and proposed the current district lines. It seems to have been the goal of that effort to include the residentially concentrated black

community in a single district wherein they could collectively exercise their greatest political influence. Despite this obvious effort to create a predominantly black district, and despite the intense residential concentration of blacks, those few black who reside outside the large black residential area preclude the creation of a predominantly black district. Thus, despite plaintiffs' best efforts, there is still no district in Liberty County wherein blacks constitute the majority of residents or registered voters.

Dr. St. Angelo testified that if Solomon had run for county commissioner from the current District I under a single-member district voting plan, he would have been successful in his 1984 candidacy. The Court finds that a black candidate could possibly be elected from District I. This finding is based less on

Dr. St. Angelo's expert opinion than on the Court's previous observation that black candidates in Liberty County have received substantial support from white voters. It is interesting to compare plaintiffs' assertion that voting in Liberty County is racially polarized to an extraordinary degree, with their assertion that a black candidate could be successful in a single-member district election, assuming continuing white support. Of course, plaintiffs would say this is merely a matter of degree -- they concede the minimal white support necessary for a black to win in a single-member district, but protest the extreme racial polarization that prevents the at-large election of black candidates. The election returns, and the Court's findings to this point, do not support any such characterization of Liberty County voting patterns.

Simply put, the bottom line of plaintiffs' position is that Solomon, a black candidate who received 41.5 percent of the countywide vote, in a county where blacks are only 11.51 percent of the registered democratic voters, would have won election from a 49 percent black district in a single-member district election. That fact seems beyond peradventure, but the Court's blunt restatement of plaintiffs' position demonstrates that Liberty County's at-large election system may not fall within the intended reach of the Voting Rights Act, and may not run afoul of the constitutional provisions in question.

2. The Swing Vote Concept.

Defendants contend that black voters in Liberty County exert considerable political influence through utilization of the swing vote concept. Liberty County is fractionalized along family lines and most

local elections are hotly contested. Dr. Billings testified that such a political climate is suitable for the exercise of the swing vote concept. Further, he testified that his research in Liberty County indicated a widely held belief that black voters operate as the swing vote in county elections. Plaintiff Solomon testified that the black vote is actively sought by white candidates and is decisive.

In rebuttal, plaintiffs offered the testimony of Dr. St. Angelo, who prepared a statistical analysis of thirty-five county-wide elections between 1970 and 1984. This analysis used the same statistical methodology as Dr. St. Angelo has used in his racial polarization index. For reasons stated earlier in this order, the Court is reluctant to rely on that methodology.

On this issue, however, Dr. St. Angelo's analysis would not be probative, even if its accuracy was beyond doubt. That is because the evidence establishes that voters and candidates in Liberty County believe that the black vote is essential to success. The significance of this perceived black status does not depend on its truth in fact.

The perception explains the efforts of white candidates to secure black support and the degree of availability, responsiveness, and sensitivity that white officials have demonstrated toward black constituents. Although the Court has previously found a significant lack of responsiveness by elected officials to the interests of blacks in Liberty County, the degree of responsiveness which has been found can only be attributed to this perceived black political influence.

3. Plaintiffs' Commitment to this Litigation.

Testimony at trial indicated that many members of the plaintiff class, and some of the named plaintiffs, have either become equivocal or are downright opposed to the maintenance of this lawsuit. Jennings, a named plaintiff, testified that he no longer wanted to be a plaintiff. He had joined the suit with the understanding that there would be a black majority in one district. When apprised of the actual racial composition of the current districts, he no longer felt single-member districts would be in the interest of black citizens. Patricia Beckwith, also a named plaintiff, testified that some members of the black community oppose single-member districts. Moreover, she testified that during the pendency of this suit, upon learning that no single-member district would be

predominantly black, she too had changed positions and opposed single-member districts. At the time of the trial, however, she had resumed her support of this lawsuit. Finally, there were several references in the testimony to a petition which has been circulated in Liberty County opposing single-member districts. Apparently, it was circulated and signed in the black community. While the propriety of Liberty County's election system does not depend on whether, why, or what proportion of blacks favor a change, their equivocation and opposition demonstrates a judgement on the part of some blacks that they are able to exercise their greatest political influence under the current at-large election system.

IV. CONCLUSIONS

1. Voting Rights Act Claims.

Plaintiffs' first claim is that the at-large election of members of the

Liberty County Commission and the Liberty County School Board has a racially discriminatory result -- the unlawful dilution of black votes. This claim is brought pursuant to the amended Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

Throughout this order, the Court has referred to the Senate Report on the 1982 amendment to Section 2 of the voting Rights Act. That report is very thorough. More importantly, however, the report indicates that the committee undertook an exhaustive analysis of the prior provision, the case law interpreting it, and the amended provision. The result of this detailed analysis is the carefully chosen words of the statute; those most significant issues surrounding the interpretation and application of the law were addressed within the terms of the amended provision:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973.

An at large election scheme is not a per se violation of this provision. Thornburg, 106 S.Ct. at 2765; Dallas County, 739 F.2d at 1534; Marengo County, 731 F.2d at 1564. Instead, any violation must be found by a totality of the circumstances. Consideration of the totality of the circumstances is generally organized around those factors enumerated in the Senate Report. See Marengo County, 731 F.2d at 1565-66; Dallas County, 739 F.2d at 1534-35. Those factors, however, were not intended to be exclusive. S. Rep. No. 417,97th Cong., 2d Sess. 29, reprinted in 1982 U.S. Code Cong. & Ad. News at 177, 207; Thornburg, 106 S.Ct. at 2764; Dallas County, 739 F.2d at 1540.

It is implicit from Congress's choice of the "totality of the circumstances" standard that none of the individual factors, nor even a majority of the factors, is a prerequisite to a finding of

a violation. The Senate Report stresses this point expressly:

> The cases demonstrate, and the Committee intends that there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.
>
> . . . .
>
> The courts ordinarily have not used these factors, nor does the Committee intend them to be used, as a mechanical "point counting" device. The failure of plaintiff to establish any particular factor, is not rebuttal evidence of non-dilution. Rather, the provision requires the court's overall judgement, based on the totality of the circumstances and guided by those relevant factors in the particular case, of whether the voting strength of minority voters is, in the language of Fortson and Burns, "minimized or cancelled out."

S. Rep. No. 417, 97th Cong., 2d Sess. 29 & n.118, reprinted in 1982 U.S. Code Cong. & Ad. News at 117, 207 & n.118. This approach is clearly reflected in the decisions of courts in this and other circuits construing § 1973. See e.g., Marengo County, 731 F.2d at 1574. The

Eleventh Circuit Court of Appeals has decided that racial polarization 'will ordinarily be the keystone of a dilution case." Id. at 1566. The Supreme Court in Thornburg has since addressed the relative importance of the factors as follows:

> Under a "functional" view of the political process mandated by § 2, . . . the most important Senate Report factors bearing on §2 challenges to multimember districts are the "extent to which minority group members have been elected to public office in the jurisdiction" and the "extent to which voting in the elections of the state or political subdivision is racially polarized." . . . If present, the other factors . . . are supportive of, but not essential to, a minority voter's claim.

Thornburg, 106 S.Ct. at 2766 n.15.

One final principle in this area must be noted, and, once again, it is a principle which Congress deemed sufficiently important to warrant express inclusion in the statute. Included in subsection (b) of the statute is what the Senate Report refers to as the disclaimer:

> The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973(b). Although the Senate Report correctly describes this disclaimer as "both clear and straightforward," S. Rep. No. 417, 97th Cong., 2d Sess. 30 reprinted in 1982 U.S. Code Cong. & Ad. News at 177, 208, "[t]here is an inherent tension between what Congress wished to do and what it wished to avoid." Thornburg, 106 S.Ct. at 2784 (O'Connor, J. concurring).

Most of the general principles expressed above have been followed in this circuit since the 1982 amendment to Section 2. In Thornburg, the Supreme Court attempted to delineate more specifically the standards to be applied in a vote dilution case. To some extent,

however, the Court tried to limit its holding to the specific factual situation presented -- a claim by a geographically cohesive minority group, which is large enough to constitute a majority in a single-member district, that a multimember electoral structure impairs their ability to elect the representatives of their choice. Thornburg, 106 S.Ct. at 2764 n.12. Nevertheless, there is enough similarity between the claims in this case and the claims in Thornburg that this Court cannot ignore the new principles expressed therein.

The Court's opinion in Thornburg contained the following language:

> While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice. Stated succinctly, a bloc voting majority must usually be able

> to defeat candidates supported by a politically cohesive, geographically insular minority group.

Id. at 2765-66 (footnote omitted). The Court goes on to outline more particularly the circumstances which usually will support such a claim. Id. at 2766-67. It is apparent from the Court's opinion, however, that the new principles are not intended to recede from the "totality of the circumstances" standard expressed in the statute, the legislative history, and the prior case law.

Having considered the evidence in light of these principles, the Court cannot conclude that a violation of the Voting Rights Act has been established. Black citizens of Liberty County do not have less opportunity than whites to participate in the political process and to elect representatives of their choice. Several relevant factors have been found individually to support this conclusion.

More importantly, however, the totality of the circumstance, as evidenced by the entire trial presentation, compels the Court's conclusion.

Plaintiffs were obviously aware that the Eleventh Circuit considers racial polarization the 'keystone of a dilution case." Marengo County, 731 F.2d at 1566. As noted above, that principle has now been affirmed and elaborated upon by the Supreme Court in Thornburg. Considerable efforts were made to prove racial polarization in Liberty County. Despite those efforts, the Court has found that voting in Liberty County is not racially polarized. Not only is the Court's conclusion supported by the narrow finding, but the reasons for that finding provide very strong, general support for the court's conclusion. For example, the fact that recent black candidates in Liberty County have received substantial

white support was relied on by the Court to find that voting is not racially polarized. It is also very strong evidence in favor of the Court's ultimate conclusion -- the black vote in Liberty County is not diluted in violation of the Voting Rights Act.

In many vote dilution cases under the Voting Rights Act, black political participation is shown to be depressed in terms of registration and voting. No such showing was made in this case, nor could it have been. Blacks face no impediments to registration, voting, or running for office. In these terms, black political participation in Liberty County is healthy. Although blacks historically have not sought public office in Liberty County, three black candidacies have arisen in the 1980's. Two of these made it to the second democratic primary where both received over 41 percent of the votes

cast. During this most recent period, therefore, black political participation in Liberty County has been far from depressed.

That the black vote in Liberty County is considered decisive has important consequences. It renders inapplicable a major reason for the relevance of racial polarization. In Rogers v. Lodge, 458 U.S. 613 (1982), the Supreme Court pointed out that "[v]oting along racial lines allows those elected to ignore black interests without fear of political consequences . . ." Id. at 623, quoted in Thornburg, 106 S. Ct. at 2765 n. 14. The Court has found that Liberty County elected officials show some degree of responsiveness to blacks, but have also exhibited a complete disregard of those interests on occasion. The Stallworth saga is regrettable, but the status of blacks as the perceived swing vote has to

be responsible for that degree of responsiveness and sensitivity which blacks in Liberty County do enjoy. If racial considerations are as dominant in Liberty County as plaintiffs contend, any regard for the interests of the black community would cease upon imposition of a single-member district system. Whether or not a black was elected in District I, a four member majority of each body could ignore or defeat all black interests with impunity. Dr. Billings warned of this likelihood.

The Court has found that any candidate, white or black, would be ill-advised to rely on racial appeals to win election in Liberty County. The Court has also found that no such appeals have been made in recent years. Assuming once again that race is as dominant in Liberty County politics as plaintiffs contend, a change to single member districts would made

overt racial appeals the order of the day in all districts except possibly District I.

The demographic characteristics of Liberty County are very important to the Court's decision. The population of Liberty County is extremely sparse. The black minority is not a substantial one, as it often is in these cases. Instead, it is only 11.06 percent -- only 471 persons. These figures should be compared with those in Marengo County, wherein the total population of the county was 53.2 percent black and the voting age population was 48.7 percent black. Marengo County, 731 F.2d at 1550-51 n.2. The Court does not mean to imply that the rights of a minority depend on its size. The point is that if a 49 percent minority consistently fails to elect candidates of their race, dilution should be suspected and will be capable of proof. That an

eleven percent minority has failed on four occasions to elect members of its race is not nearly so suspect. Proof of dilution in such a case is necessarily much more difficult.

Finally, the Court must observe that many of the factors mentioned herein must have occurred to the black citizens of Liberty County. That the class has lacked unity of purpose and conviction in the maintenance of this lawsuit validates the Court's conclusion to some extent. Furthermore, plaintiffs' equivocation has given the Court the distinct impression that their ultimate goal is one which the Voting RIghts Act does not secure for them. The goal of this litigation seems to have been the drawing of a district in which blacks would constitute a majority and could elect a black candidate to represent them. The language of the Voting Rights Act, however, is

result of the at-large voting system. This conclusion is based on the foregoing analysis of plaintiffs' claims under the Voting Rights Act. Accordingly, defendants must prevail on plaintiffs' constitutional claims against them as well.

The Clerk is directed to enter judgment for defendants and against plaintiffs on all claims herein.

DONE AND ORDERED this _____ day of _____, 1987.

_____

United States District Judge